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Letter dated 24 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/897).

The Counter-Terrorism Committee has received the attached supplementary report from Germany, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 22 October 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Enclosed please find my Government's supplementary report to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (see enclosure). I hope that this report will answer the questions of the Committee.

(*Signed*) Hanns **Schumacher**

Enclosure

Germany: supplementary report to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Introduction

On 27 December 2001, Germany submitted its report to the Counter-Terrorism Committee (CTC), prepared in compliance with paragraph 6 of Security Council resolution 1373 (2001). In a letter dated 15 July 2002, the CTC informed Germany that it had considered the report carefully, and put forward a number of preliminary comments/questions on the report. This supplementary report provides answers to those preliminary comments/questions.

Paragraph 1 (a)

Does Germany have any provision for regulating informal banking networks? Please outline such provisions.

According to section 32 of the German Banking Act in connection with section 1 (1a) no. 6 thereof, all banks in Germany have to be licensed and supervised by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BAFin). Informal banking networks are illegal under the German Banking Act.

Anyone who conducts banking business or provides financial services without the licence required under section 32 (1) sentence 1 will be punished by a term of imprisonment not exceeding three years or by a fine (section 54 (1) no. 2).

Since 1998 more than 1.000 informal financial networks have been detected by BAFin and their financial activities prohibited.

Are natural or legal persons other than banks (e.g. attorney, notaries) required to report suspicious transactions that might be linked to terrorist activities to the public authorities? If so, what penalties apply to persons who omit to report either wilfully or by negligence?

In Germany, it is not just financial institutions that are required to report suspicious transactions that might be used to finance terrorist organizations or would serve this purpose if accomplished. Companies and certain persons are also required to report such transactions, as laid down by section 11 of the new version of the Money Laundering Act (Geldwäschegesetz) (GwG) that entered into force on 15 August 2002 in accordance with the provisions set forth in Article 1, no. 2 of Directive 2001/97/EC issued by the European Parliament and the Council on 4 December 2001 amending Directive 91/308/EEC of the Council on the prevention of the use of the financial system for the purpose of money laundering. Pursuant to section 3, subsection 1 of the Money Laundering Act, lawyers, patent lawyers and notaries are also obliged to combat money laundering insofar as they are involved in certain transactions. The same applies to accountants, tax consultants, real estate agents, casinos and other businesspeople. However, limitations do apply to lawyers and notaries. They are not obliged to report suspicious transactions if the suspicion is based on information that was divulged within the framework of legal advice or representation in court.

Clear violations of the obligation to report suspicious transactions set forth in section 11 of the Money Laundering Act are subject to sanctions: on the one hand, if banks fail to meet their relevant obligations there is a possibility they can be sanctioned using bank supervisory instruments. On the other hand, section 261, subsection 5 of the German Criminal Code states that even (grossly) negligent involvement in money laundering activities constitutes a criminal offence. Those responsible for reporting suspicious transactions (e. g. bank staff), who should have recognised the dubious origin of the money, but who carried out the transaction nonetheless, run the risk of committing a criminal offence for taking part in money laundering activities. They can only avoid committing a criminal offence by reporting the hitherto undetected transaction voluntarily to the competent authorities (section 261, subsection 9 sentence 1 of the German Criminal Code). In these cases, failure to report suspicious transactions is thus indirectly also a punishable offence. In the year 2000, 14 persons were sentenced for *negligent* money laundering. In addition, anyone who fails to identify a person, who does not correctly note an observation, does not preserve the notes, fails to establish the correct name and address of the person to be identified, informs the party ordering the financial transaction or a party other than a public authority, fails to report such transactions to the competent authority at all or in due time, shall be deemed to have committed an administrative offence under section 17 of the Money Laundering Act. Any such administrative offences may be punished by a fine of up to € 100,000.

Please elaborate on the right of the Federal Office for the Protection of the Constitution (which according to sub-paragraph 2(b) of the report will also be granted to the Federal Intelligence Service) to request information from credit institutions, finance companies and financial service institutions about accounts, account-holders and "other authorized persons".

As the suicide attacks of 11 September 2001 have shown, foreign terrorist organizations did not just use the USA and other non-European and European countries to prepare their attacks, they also used Germany. Logistical preparations were made and funds provided here. In order to facilitate the earliest possible identification of terrorist activities, the Federal Office for the Protection of the Constitution and the Federal Intelligence Service have been given the power, by virtue of the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz), to seek information from banks and financial service institutions in order to investigate the flows of financial resources and account transactions. According to section 8, subsection 5 of the Federal Act for the Protection of the Constitution (Bundesverfassungsschutzgesetz), the Federal Office for the Protection of the Constitution is entitled, in individual cases, to ask credit institutions, financial service institutes and finance companies to provide information free of charge on accounts, account-holders and on any other authorized persons or parties involved in financial transactions as well as on financial transactions and investments, if this is required for the purpose of performing its duties and if there are actual grounds to suggest certain assets requiring protection are at serious risk. This enhanced investigative tool is intended to implement the demand raised by the UN Security Council in Resolution 1373 (2001) that funds and other financial assets or economic resources belonging to terrorist organizations be frozen. In the interest of fully disclosing the financial logistics of terrorism, the power to request information is confined not just to account-holders, but also extends to any persons who are authorized to access the account.

According to section 8, subsection 9 of the Federal Act on the Protection of the Constitution, information can only be requested pursuant to section 8 (5) by means of an application in writing by the President of the Federal Office for the Protection of the Constitution or by his representative giving reasons for the application. The Federal Ministry of the Interior, the Ministry empowered by the Federal Chancellor, decides whether or not the application should be granted. The Ministry informs the so-called "G 10 Commission" (based on the Act on Article 10 of the Basic Law regarding the privacy of correspondence, posts and telecommunications) every month about the decisions on the applications made prior to their execution. In case of imminent danger, the Federal Ministry can order the execution

of a decision even before notifying the G 10 Commission. The G 10 Commission, whose consultations are confidential, checks ex officio or on the basis of complaints filed whether it is permissible and necessary to obtain information. The Federal Ministry is obliged to nullify forthwith any decisions on information which the G 10 Commission deems impermissible or non-necessary. The party providing information is not permitted to notify the parties concerned or any third parties of the request for information or of the data transmitted.

The report states under sub-paragraphs 2 (f), 3 (d), and 3 (e) that Germany is in compliance with all relevant international conventions against terrorism. However, under sub-paragraph 1 (a) of the report, it is stated that an amendment to the German Criminal code is being considered in order to ensure that all forms of terrorist financing are covered by the Criminal Code. The CTC would welcome a progress report on that amendment.

The Thirty-fourth Criminal Law Amendment Act of 22 August 2002 (Federal Law Gazette 2002 Part I Number 61 of 29 August 2002, p. 3390) entered into force on 30 August 2002. By virtue of Article 1 no. 7 of this Act the list of offences preceding money laundering or concealment of unlawfully acquired assets in section 261 subsection 1, second sentence number 5, of the Criminal Code (StGB) has been supplemented by offences pursuant to section 129 of the Criminal Code (formation of criminal organizations) and section 129a subsection 3 of the Criminal Code (supporting terrorist organizations including foreign ones, recruiting for such organizations). Hence the list of offences preceding money laundering or concealment of unlawfully acquired assets (section 261 subsection 1, second sentence number 5 of the Criminal Code) now includes all criminal offences that aid the funding of terrorist organizations, including foreign organizations.

Please provide a progress report on the amendments to the Money Laundering Act (Geldwäschegesetz) aimed at extending the use of the mechanisms provided for in that Act in order to identify, prevent, and suppress the financing of terrorism.

Apart from the legal measures envisaged in the Money Laundering Act, a package of measures to combat money laundering and the funding of terrorist activities was introduced within the framework of the Fourth Financial Market Promotion Act which has been effective since 1 July 2002. According to the new section 24c of the Banking Act, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BAFin) may retrieve specific data about all accounts and securities accounts held in German banks. The BAFin may on request disclose information about this data to supervisory authorities, law enforcement authorities and courts. This measure is intended to assist in revealing money flows which support money laundering and terrorism.

According to the new section 25a banks are required to set up adequate internal computer systems to protect against money laundering, funding of terrorist activities and fraud. This is to allow business transactions to be screened for risk groups and suspicious features.

Paragraph 1 (b)

Germany intends to ratify the International Convention for the Suppression of the Financing of Terrorism. The CTC would therefore be grateful to receive a progress report regarding any proposed legislation to implement that Convention, especially Articles 2 and 4.

The German Government is currently drafting a bill on the ratification of the International Convention for the Suppression of the Financing of Terrorism. The *Bundestag* (Lower House of the German Parliament) and the *Bundesrat* (Upper House in which the Federal Länder are represented) have

recently adopted legislation aimed at extending the application of criminal provisions to terrorist and criminal organizations acting outside German territory. The bill has been published and the new provisions entered into force the 30th of August 2002.

Paragraph 1 (c)

Please outline the procedure leading to the freezing of funds or other financial assets or economic resources following a request by a foreign public authority. How long does it take in practice to freeze such funds etc. in such cases.

According to section 2 and section 7 of the Foreign Trade and Payments Act (Außenwirtschaftsgesetz AWG) it is possible in Germany to restrict legal transactions or activities concerning foreign trade and payments by an administrative act, if the provisions of section 2, para 2, and section 7, para 1, of the Foreign Trade and Payments Act are met. These provisions enable the German government to restrict legal transactions or activities concerning foreign trade and payments in order to

1. guarantee the security of the Federal Republic of Germany
2. prevent a disturbance of the peaceful coexistence of nations, or
3. prevent the external relations of the Federal Republic of Germany from being seriously disrupted.

According to our experience after 11 September these measures can be taken very quickly — within a few days — if sufficient evidence to fulfil the legal requirements is presented by the requesting foreign authority.

What measures has Germany taken or does it propose to take to freeze funds or other assets or economic resources of a person or entity supporting terrorism in Germany or in other EU countries?

Germany is in a position to restrict capital and payment transactions involving the persons or organizations targeted under UNSCR 1373 (2001) on the basis of sections 2 and 7 of the Foreign Trade and Payments Act. The provisions of those two sections enable the German Government to restrict transactions or activities concerning foreign trade and payments in order to protect against specific risks to the values referred to in section 7, subsection 1 of the Foreign Trade and Payments Act, cf. above.

Specifically, such measures can be applied against persons or entities supporting terrorism in other EU countries. To date, no such measures have been applied as Germany intends to adopt such measures in close coordination with its EU partners, a process that has been initiated by Germany and which is still ongoing. It should be noted that the German law of criminal procedure already provides for the securing of objects and seizure of property as a provisional measure (sections 111b and 111c of the Code of Criminal Procedure). These provisions apply to items that have been used in order to commit, plan or prepare an offence as well as to the proceeds of crime, irrespective of the nationality of the perpetrator of the offence. Although not intended as a special measure to combat terrorism, the provisions also cover items used for or intended to be used for terrorist purposes and proceeds derived from terrorist activities. Attachment in rem may be ordered in accordance with section 111d of the Code of Criminal Procedure to secure forfeiture or confiscation of equivalent value, a fine or the anticipated cost of criminal proceedings.

Paragraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

The new Money Laundering Act, in implementing the instructions of the Financial Action Task Force on Money Laundering (FATF) of October 2001, extends the obligation on all institutions operating in the financial sector to report suspicious transactions to cover the financing of terrorist activities. Section 11 of the Money Laundering Act now also obliges institutions to report suspicious findings if the facts suggest that a financial transaction might benefit a terrorist organization or would serve this purpose if accomplished. Even financial transactions of charities that may finance terrorist activities are covered by this section.

The legal requirements for banning inter alia so-called "associations of foreigners" have been enhanced within the framework of the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz) of 9 January 2002 in order to prevent terrorist groups from receiving financial support abroad. Pursuant to section 14, subsection 2, no. 5 of the Law governing Private Associations (Vereinsgesetz), an association of foreigners (an association all or most of whose members or leaders are non-EU nationals) can be banned if it supports organizations outside Germany that instigate, support or threaten attacks against persons or property. By banning Al-Aqsa e.V. 5 August 2002, Germany made use of this power for the first time.

To date, no financial tracking system (in Germany or elsewhere) has been developed which is in a position to ensure that funds received by associations are not diverted from their stated purposes to serve terrorist activities. Such a system would require that all financial activities and their complete economic background be transparent to the operator of that system. However, if funds are accepted by the receiving association as cashless payments in its account and these funds are transmitted onward to a third party on a cashless basis, the account-keeping bank is able under certain circumstances to note facts suggesting that the transfer serves the purposes of funding terrorist activities. According to section 25a of the German Banking Act, German banks are obliged to define adequate internal "know your customer standards" to enable them to detect transactions which seem to serve the purposes of financing terrorism.

Paragraph 2 (a)

European Council Directive 91/477/EEC of 1991 imposes on Germany, along with all other Member States of the EU, an obligation to allow the acquisition of a certain category of weapon only by persons who have a "good cause" for having such weapons and who are not likely to be a danger to public order or safety. The CTC would be grateful for clarification of what constitutes a "good cause" in Germany for these purposes and of the procedure to determine whether a person poses a danger to public order and safety.

Section 32 of the German Weapons Act (Waffengesetz) as currently in force stipulates that a good cause exists in particular if persons applying for a permit can prove credibly

1. that they require long-range weapons as holders of a valid annual hunting permit, i.e. as certified hunters who are in possession of an official hunting permit,
2. that they require firearms as hobby marksmen engaged in genuine sport in licensed firing ranges, for participation in proper shooting competitions or as members of traditional shooting associations,
3. that they are at far greater risk to life and limb than the general public, and purchasing firearms or ammunition is appropriate to minimize this risk, or

4. that they are active as technical or scientific collectors of arms or ammunition or plan to develop or expand a collection that is significant for cultural history, provided that it is sufficiently protected from unauthorized access.

Hobby marksmen who want to purchase a short-range weapon or a self-loading long-range weapon require a reference from a sports club stating that they have successfully taken part in club shooting exercises at regular intervals for at least six months and that they need the weapon to engage in the sporting discipline.

These provisions have been defined in greater detail in the amended version of the Weapons Act (Waffengesetz) now passed by the German Bundestag. In future, hobby marksmen will have to have been active for one year in order to be granted a reference from a sports club. Furthermore, sports clubs will in future be subject to an additional approval procedure aimed at ensuring that they do not serve the purpose of arms procurement.

Only persons who are deemed reliable within the meaning of the Weapons Act shall be granted a permit to hold weapons. It must be ruled out

- that weapons or ammunition will be used abusively or negligently,
- that the arms will not be used properly or will not be stored safely,
- that third parties who are not authorized to handle arms will have access to them.

As a rule, persons are deemed unreliable who have been finally convicted of betrayal of peace, treason, endangering the democratic rule of law, high treason, threatening external security, deliberately harming another person's life or health, rape, procurement of sexual services, civil disorder or unlawful entry, resistance against state authority, committing a crime that constitutes a public hazard or a pecuniary offence. The same applies to persons who have been finally convicted on at least two occasions of a criminal offence committed when inebriated, or who have been finally convicted of criminal negligence related to handling weapons, ammunition or explosives, violating the Weapons Act, the Act on the Control of War Weapons (Gesetz über die Kontrolle von Kriegswaffen), the Explosives Act (Sprengstoffgesetz) and the Federal Hunting Act (Bundesjagdgesetz) or who have repeatedly or grossly violated the provisions set forth in any of the above-mentioned Acts, even if not convicted.

Persons who are legally incapacitated or are limited in their ability to contract, who are addicted to drugs or alcohol, mentally ill or mentally incapacitated are also deemed unreliable.

The provisions governing reliability have also been amended by the new Weapons Act adopted by the German Bundestag which will probably enter into force in the first quarter of 2003. Unreliability is, in particular, no longer linked to the commission of certain types of criminal offence. Rather, persons are deemed unreliable if

- they have been sentenced to at least one year's imprisonment for committing a criminal offence or for a minor crime that was committed wilfully,
- they have been sentenced res judicata to imprisonment, been given a young offenders' sentence or a fine of at least sixty diem units or at least twice to a low fine for committing a criminal offence of intent, a negligent offence associated with the handling of weapons, ammunition or explosives, a negligent offence that constitutes a public hazard, violating the Weapons Act, the Act on the Control of War Weapons, the Explosives Act or the Federal Hunting Act.

As a rule, the following persons are also deemed unreliable:

- Members of an association that has been banned incontestably under the Law governing Private Associations (Vereinsgesetz), unless ten years have elapsed since the membership of such association was terminated;
- Members of an association that is subject to an incontestable ban on activities under the Law governing Private Associations (this applies to associations of foreigners that are not registered in Germany), unless ten years have elapsed since the membership of any such association was terminated;
- Members of a party that has been found to be unconstitutional by the Federal Constitutional Court under section 46 of the Act governing the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz), unless ten years have elapsed since the membership of any such association was terminated;
- Persons who are pursuing or have pursued goals in the past five years, as individuals or as members of an association, that are directed against the constitutional order or the concept of international understanding, in particular against the peaceful coexistence of peoples;
- Violent persons who have been taken into court-ordered preventative custody by the police more than once in the past five years.

Furthermore, the provisions governing gross violations of the relevant legal provisions and on the non-suitability of legally incapacitated persons or persons who are limited in their ability to contract or addicted to drugs shall continue to apply.

The investigations conducted by the competent authorities shall take into consideration entries made in the Federal Central Criminal Register (crimes), in the central public prosecutors' case register (pending criminal proceedings) and findings of the competent police departments.

What export controls does Germany have in place to prevent terrorists from obtaining weapons?

The export of military weapons, for example machine guns, submachine guns and assault rifles is subject to a comprehensive licensing requirement. A licence for the export of such military equipment will only be granted for the export to state entities in the recipient country, i. e. the applicant for an export licence has to produce an official end-use certificate signed by the armed forces or the police forces of the country of final destination. A licence will only be issued if the export is in line with the Policy Principles of the Federal Government for the export of war weapons and other military equipment. A reason for denying a licence is for example the risk of diversion of the equipment to recipients other than those stated in the application. If a government has produced false end-use certificates all licence applications for that country will be rejected until further notice.

Paragraph 2 (b)

Please elaborate on how the "state's options for taking action against extremist associations of foreigners and foreign organizations have been increased and enhanced". Have they also been improved regarding extremist associations of German citizens?

In the wake of the terrorist attacks launched against the USA on 11 September 2001, two legislative packages were initiated in the Federal Republic of Germany aimed at enhancing the prevention of international terrorism.

1. As part of "Security Package I", as an emergency measure, the Law governing Private Associations was amended to cover religious communities by deleting the relevant exemptions in section 2, subsection 2,

no. 3 of this law. Now extremist religious or ideological groups can also be banned, regardless of the nationality of their members, i.e. regardless of whether they are Germans or foreigners if

- their goals or activities are directed at committing criminal offences,
- they oppose the constitutional order or
- they are directed against the concept of international understanding.

On 12 December 2001 the extremist Islamist organization "Kalifatsstaat" was the first religious group to be banned.

2. When the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz) entered into force on 1 January 2002 (also referred to as the Anti-Terror Act or "Security Package II"), the activities of extremist associations of foreigners were limited more effectively by extending the grounds for imposing bans or limiting activities (Article 9 – Amendments to the Law governing Private Associations).

Sections 14 and 15 of the Law governing Private Associations regulate the banning of associations of foreigners or their activities. The legislation previously in force did not provide sufficient scope for taking action against associations of foreigners that support violent or terrorist organizations, for instance, by making donations, recruiting terrorists or supporting them in any other way. This is why the grounds for banning private associations and for banning activities were extended to include associations of foreigners and international associations and more specific conditions for official action were defined.

The extension was based on the example of the existing rules governing bans on the political activity of individual foreigners, which are now contained in section 47 of the Residence Act (Aufenthaltsgesetz) (based on an amendment to the Aliens Act (Ausländergesetz) which did not change the wording of the paragraph). The most important new development that deserves mention is the possibility of banning associations of foreigners insofar as their purpose or activities

- promote activities outside the Federal Republic of Germany whose goals or instruments are incompatible with the basic values of a country that respects human dignity,
- support, advocate or solicit the use of violence as a means of accomplishing political, religious or other ends.
- The same applies to associations within or outside the Federal territory that instigate, support or threaten to launch attacks against persons or property.

This means the instruments relating to *collective* activities of foreigners have been aligned with the instruments limiting the political activities of *individual* foreigners as set forth in section 47 of the Residence Act. EU foreigners (EU citizens) are not affected by this; the amendments regarding associations of foreigners only apply to associations of third-state nationals from non-EU countries. Due to the universally applicable amendment to the Law governing Private Associations (i.e. which also applies to German nationals) within the framework of "Security Package I" (cf. number 1 above), extremist *religious-ideological* associations of foreigners are also affected by the extended powers to impose bans.

The new regulations were applied for the first time on 5 August 2002 when the association "Al-Aqsa e.V." was banned.

Paragraph 2 (b): Please explain on which grounds relevant to the implementation of this sub-paragraph the authorities will be able to ban associations of German and foreign citizens, once the Act governing Private Associations (Vereinsgesetz) is amended.

In response to the question, reference is made to the wording of section 3, subsection 1, sentence 1 and section 14, subsections 1 and 2 of the Law governing Private Associations:

Section 3, subsection 1, sentence 1 of the Law governing Private Associations (which applies to all associations):

An association can only be deemed prohibited (Article 9, para. 2 of the Basic Law) if it has been established by the decree of the authorities banning it, that its purposes or activities conflict with criminal laws or are directed against the constitutional order or the concept of international understanding, the decree shall order that the association be dissolved (banned).

Section 14, subsections 1 - 3 of the Law governing Private Associations (only applies to associations of foreigners who are third country nationals):

(1) Associations all or most of whose members or leaders are foreigners (associations of foreigners) can be banned above and beyond the reasons set forth in Article 9, para. 2 of the Basic Law under the circumstances set forth in subsection 2. Associations all or most of whose members or leaders are foreign nationals of a Member State of the European Union are not deemed associations of foreigners. (...)

(2) Associations of foreigners can be banned if their purpose or activities

1. impair or pose a threat to the formation of the political will of the people in the Federal Republic of Germany or to the peaceful coexistence of Germans and foreigners or various groups of foreigners within the Federal territory, to public security or order or any other major interests of the Federal Republic of Germany,
2. contravene the Federal Republic of Germany's obligations under international law,
3. promote activities outside the Federal Republic of Germany whose goals or means are incompatible with the basic values of a country that respects human dignity,
4. support, advocate or solicit the use of violence as a means of accomplishing political, religious or other ends,
5. support associations within or outside the Federal territory that instigate, support or threaten to launch attacks against persons or property.

(3) Instead of banning the associations, the authorities may also ban certain actions or certain persons of associations of foreigners. In all other respects the legal provisions governing the safeguarding of public security and order are not affected vis-à-vis associations of foreigners.

Paragraph 2 (b): Please provide the CTC with information on the mechanism for inter-agency cooperation, both at the federal level and between the Federal Government and the Government of the Länder, among the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls designed to prevent the movement of terrorists.

Police authority in the Federal Republic of Germany falls within the remit of the Federal Länder. Pursuant to Article 87, para. 1, sentence 2 of the Basic Law, central offices for police information and communications and for the criminal police may be established by federal legislation.

The "Law governing the Federal Criminal Police Office and Cooperation between the Federation and the Federal Länder in Matters concerning the Federal Criminal Police Office" (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten) (BKAG) therefore assigns also central coordination duties to the Federal Criminal Police Office. The Specialized "Police State Protection" Department set up at the Federal Criminal Police Office supports and coordinates the police forces of the Federal Länder in preventing and prosecuting criminal offences that are of national, international or major importance. It also collects and analyzes all the necessary information. The collection of information is essentially based on the "Federal Criminal Police Reporting Service – Politically-Motivated Crime (KPMD-PMK)" and a number of special reporting services that are copied into a data network system and are binding on the police forces of the Federal Länder by virtue of nationwide directives. Additional information is transmitted by the Intelligence Services or is gained within the framework of international cooperation. National cooperation between the police forces of the Federal Länder and the Federal Criminal Police Office is also coordinated within special cooperation bodies such as the State Protection Commission.

The Federal Office for the Protection of the Constitution, the Federal Intelligence Service and the Military Counterintelligence Service are responsible for investigating the preliminary stages of terrorist crime, also using intelligence service instruments. The information-related cooperation between the police and the intelligence services is regulated by statute. In order to guarantee the most comprehensive and smoothest cooperation possible, national coordination task forces have been set up in the various fields of terrorism. Furthermore, the so-called "Information Board" was established as a special form of cooperation. This deals with ongoing pooling and evaluation of police and intelligence service findings independent of specific cases that focus on identifying and preventing terrorist crimes.

The Federal Border Police, responsible for border control at the national external borders of the Schengen Area is closely involved in cooperation between police forces. Offenders for whom a search warrant has been issued by the German police forces are regularly publicized in the border search database. The Federal Border Police thus plays an important role in controlling the entry of terrorists.

As far as preventing the financing of terrorist groups is concerned, the forms of cooperation mentioned in the foregoing are also available here and are being used intensively. In all other respects, reference is made to the answers given to the issues raised in paragraph 1.

As the national central office for police information and intelligence services and for the criminal police, the Federal Criminal Police Office supports the police forces of the Federation and the Federal Länder in their measures to combat trafficking in narcotics. As the central offices of the Federal Länder, the Criminal Offices of the Federal Länder are responsible in the field of drug prevention for the collection, evaluation and forwarding of information and, as a rule, also for conducting investigations of supraregional character. The various local authorities, such as police headquarters and directorates, report to the Criminal Police Offices of the Federal Länder and are responsible for the criminal and general police services. The Federal Criminal Police Office therefore cooperates closely with the police forces of the Federal Länder, the Federal Border Police, the Central Office of the German Customs Investigation Service and the customs and tax investigation authorities in evaluations and investigations. On the basis of the rights and obligations assigned to them, an exchange of information

takes place in concrete individual cases between the Federal Criminal Police Office and the Federal Intelligence Service. The Federal Criminal Police Office and the Federal Border Police report to the Federal Ministry of the Interior, whereas the Central Office of the German Customs Investigation Service reports to the Ministry of Finance. The customs administration includes, at regional level, the customs investigation service, which reports to the Central Office of the Customs Investigation Service and has competencies that are geographically limited. The customs authorities have original competencies regarding prosecution insofar as this is required in connection with monitoring the cross-border movement of goods. This also includes responsibility for conclusive investigations aimed at seizing narcotics in the field of import smuggling. In principle, the customs authorities can avail themselves of the same legal instruments as the police.

The Federal Criminal Police Office and the Central Office of the German Customs Investigation Service cooperate horizontally within the framework of the "Joint Customs/
Police Precursor Control Unit". At the level of the Federal Länder, there are so-called "Joint Drugs Investigation Groups" comprising representatives of the police forces of the Federal Länder and customs authorities.

The cooperation between the Federal Government and the Federal Länder in combating narcotics-related crime is primarily coordinated within the framework of the work performed by joint bodies. Special mention must be made of the "Permanent Working Group on Narcotics" that has been convening twice a year since 1972 under the chairmanship of the Federal Criminal Police Office and brings together the heads of the central narcotics offices in Germany and the bordering countries. Furthermore, case-related meetings take place between the heads of the central narcotics offices of the Federation and the Federal Länder.

Paragraph 2 (c)

Please elaborate on the restrictions provided for in the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz).

The amendments made to the Residence Act (Aufenthaltsgesetz) within the framework of the Prevention of Terrorism Act envisage, inter alia, refusal to grant visas or residence permits to persons who pose a threat to the free democratic order or security of the Federal Republic of Germany, to persons who participate in violence in pursuit of political goals, to persons who publicly call for the use of violence or who are proven to belong to an association that supports international terrorism. In doing so, the findings of the federal security authorities and the Central Aliens Registry are used. Foreigners will also be deported if facts prove that they belong to an association that supports international terrorism or if they support any such association.

Are there any provisions under the existing laws which exclude from access to Germany persons of the kind mentioned in sub-paragraph 2 (c)?

Please refer to the previous answer.

Paragraph 2 (d)

Which are the offences listed in sub-paragraph 2 (d) of the Resolution which "can only be prosecuted in Germany, if the offence also incurs criminal liability in the country where it was committed"?

Sections 5 and 6 of the German Criminal Code enumerate a wide range of criminal offences which can be prosecuted by German authorities regardless of where the crimes were committed. In addition to the offences listed, section 7 of the German Criminal Code provides for the application of German criminal

law to offences committed abroad, provided that the victim of the offence is a German national and that the offence is a punishable crime in the country where the offence was committed, or if the place where the offence was committed is not subject to criminal law enforcement. Under this provision, German criminal law also applies if the perpetrator was a German national at the time he or she committed the offence, or if he or she became a German national after committing the offence. The provision further applies if the perpetrator was a foreigner, but was found to be in Germany and cannot be extradited, although the Extradition Act would permit extradition for such an offence.

Please provide the CTC with a progress report on the proposed amendments aimed at extending the criminal provisions applicable to terrorist organizations and their global activities.

The *Bundestag* and the *Bundesrat* have recently adopted legislation aimed at extending the application of section 129a of the German Criminal Code to terrorist and criminal organizations abroad. Section 129a of the German Criminal Code imposes criminal liability upon persons who form an organization whose objectives and activities are aimed at committing a number of specified and serious crimes. Participation in or support of such an organization are also deemed to be criminal offences. The new bill provides that the Ministry of Justice may authorize the prosecution of such organizations acting outside of Germany and the European Union.

What measures are in place to prevent or punish the activities of terrorist organizations operating from Germany, (fund-raising for example) for a cause not likely to affect German interests?

Criminal prosecution of terrorist or criminal organizations acting in Germany is dependent upon whether there are sufficient grounds to deem that their activities are punishable according to section 129a of the German Criminal Code. This also applies to the participation in or the support of such organizations, which includes making financial contributions and donations to them.

Paragraph 2 (f)

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) is required to be met and how long does it actually take in practice to implement such a request in Germany?

There is no legal timeframe required to be met for a request for judicial assistance in criminal investigations or criminal proceedings.

The implementation of a request for judicial assistance depends, of course, upon what is requested.

Requests made by most Member States of the European Union can be addressed directly to the German judicial authorities responsible for the implementation of such a request. In most other cases, requests for judicial assistance can be directed to the Federal Ministry of Justice or to the Regional Ministries of Justice pursuant to the applicable international agreements.

No official statistics are kept on mutual legal assistance cases in Germany. It is hence not possible to provide statistical information on the time taken for processing. However, once a request has been granted, implementation normally takes between one and three months. Requests relating to terrorism are given priority.

Paragraph 3 (a)

The report states under sub-paragraph 2 (b) that statutory amendments have been submitted to parliament, in particular in order to monitor the use of communication technologies by terrorist groups. Could Germany please indicate how it intends to intensify and accelerate the exchange of operational information with other States in this regard?

Germany avails itself of all available cooperation frameworks and has to this end ratified the necessary international treaties. The same is true of the exchange of operational information. Information on the cross-border movement of terrorists is passed on immediately within the framework of the structured exchange of intelligence, even if this information is initially based on findings of the intelligence services. This applies in particular to the use of falsified or forged passports and to trafficking in weapons, explosives or other sensitive materials, which as a rule constitute criminal offences. The Federal Criminal Police Office has specialized offices for combating the criminal use of modern communications technologies or weapons of mass destruction by terrorists or terrorist groups. Germany is also actively involved in relevant forms of cooperation that have been developed specifically for this purpose.

Paragraph 3 (d)

The CTC would welcome a progress report, in relation to the international conventions and protocols relating to terrorism, on the steps taken with regard to:

- *becoming a party to the instruments to which Germany is not yet a party, and*
- *enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.*

As stated in the initial report to the Counter Terrorism Committee, Germany has ratified all but two of the twelve international conventions and protocols against terrorism. As a rule, Germany enacts all necessary legislation before becoming party to an international convention, so no further action was required with regard to the first ten agreements. Germany can comply with all the obligations contained in all twelve conventions on the basis of domestic law, including international cooperation, even in the absence of an international convention.

A law on the ratification of the International Convention for the Suppression of Terrorist Bombings has been approved by the *Bundestag* and the *Bundesrat* and will enter into force shortly, allowing for the deposition of the instrument of ratification in the near future. A similar law on the ratification of the International Convention for the Suppression of the Financing of Terrorism is currently being drafted (cf. the answer to the question on Paragraph 1 (b)).

Paragraph 3 (e)

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Germany is party?

Pursuant to German law, any offence is considered extraditable which is punishable by at least a maximum term of imprisonment of one year under German law or, if German law does not apply, provided that the offence would be punishable if German law were applicable (section 3(1) of the Law on International Judicial Assistance). The offences detailed in the relevant international agreements are punishable offences which meet this requirement.

Paragraph 3 (f)

According to the report, the "Federal Agency for the Recognition of Foreign Refugees" (BAFl) automatically informs the Federal Office for the Protection of the Constitution if it learns of any facts during asylum proceedings that threaten the security of the Federal Government or a Federal Land with the use or preparation of violence". Is the Federal Agency for the Recognition of Foreign Refugees under a legal obligation to so inform the Federal Office for the Protection of the Constitution? Please elaborate.

The same agency "can also pass on to the prosecution authorities any data collected in asylum proceedings for the purposes of a criminal prosecution". According to sub-paragraph 2 (b) of the report, this agency and the "aliens authorities" will also "be permitted, under certain circumstances, to transmit at their own initiative any data that has come to their attention about endeavours or activities which the authorities responsible for protecting the constitution are permitted to collect and evaluate information on, if there are concrete grounds to suggest the transmission of such data is necessary to enable the authorities responsible for protecting the Constitution to perform their duties". Please clarify whether the data referred to above can be transmitted at the discretion of the Federal Agency for the Recognition of Foreign Refugees and of the "aliens authorities" or whether they are under a legal obligation to transmit the data if the data concerns persons supporting terrorism.

The new section 18, subsection 1a, sentence 1 of the Federal Act on the Protection of the Constitution specifies that the Federal Agency for the Recognition of Foreign Refugees shall at its own initiative inform the Federal Office for the Protection of the Constitution of any information that has come to its attention, including personal data, on efforts or activities defined in section 3, subsection 1 of the Federal Act on the Protection of the Constitution (that also applies to supporting terrorism), if there is actual evidence to suggest that the transmission of such data is necessary for the performance of tasks by the authorities responsible for the protection of the constitution. The same applies to aliens authorities that are likewise obliged to notify the relevant Land authorities responsible for the protection of the constitution.

Please provide a detailed description of the amendments intended to implement sub-paragraphs 2 (f) and (g) that are included in the Prevention of Terrorism Act recently introduced into the German Parliament.

We are at present unable to provide more detailed descriptions of the planned amendments of the Prevention of Terrrorism Act, since the legislation is still in progress.

Paragraph 4

Has Germany addressed any of the concerns expressed in paragraph 4 of the Resolution, in particular regarding transnational organized crime?

In the areas mentioned in paragraph 4 of UN Security Council Resolution 1373, the Federal Criminal Police Office is involved in intensive cooperation at international level. This includes active involvement in Europol activities. Germany has also signed the UN Conventions on Terrorism, Drugs and Organized Crime and has already implemented most of them.

As a response to the links between international terrorism and international organized crime, the instruments competing money laundering which serve the prevention of organized crime were extended to suppress the financing of terrorism by the Money Laundering Act which entered into force in August. In this connection, a

Financial Intelligence Unit was set up at the Federal Criminal Police Office which is in particular responsible for cooperating with the competent central offices of other countries on the prosecution of money laundering and the financing of terrorist groups.

Other matters

Could Germany please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

Cf. attachment.

Please provide the CTC with a progress report on the Prevention of Terrorism Act (Terrorismusbekämpfungsgesetz).

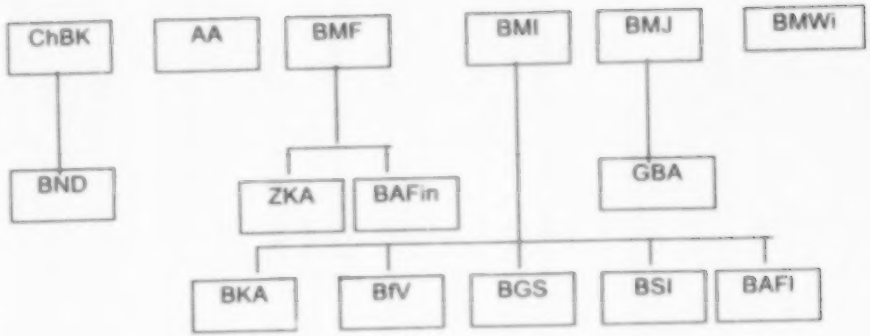
The Prevention of International Terrorism Act that entered into force on 1 January 2002 (Prevention of Terrorism Act) bestowed the necessary powers on the German security authorities to effectively counteract the new form of international terrorism less than 4 months after the terrorist attacks of 11 September 2001. Amendments have been made to numerous security statutes in order to

- extend the powers of security authorities in the interest of preventing terrorism,
- enhance the necessary data exchange between the authorities,
- prevent terrorists from entering Germany,
- enhance the identification of extremists who have already entered the country and increase the options for terminating their residence,
- enhance identification measures in visa procedures,
- facilitate the deployment of armed air marshals on German aircraft,
- enhance border control facilities,
- enable security checks on staff employed in essential facilities and facilities that are vital for defence,
- create the legal basis for integrating biometric data into passports and identity documents,
- limit the right to use firearms on board civilian aircraft to police officers,
- take swifter measures to ban activities of extremist associations of foreigners in Germany.

Insofar as the security authorities of the Federation and the Federal Länder have received direct new powers by virtue of these statutory amendments, they have also made use of them since the Act entered into force.

Some of the statutory amendments realized in the Prevention of Terrorism Act still require further implementation measures. The security authorities of the Federation and the Federal Länder began to take the necessary measures as soon as the Act entered into force on 1 January 2002. These entail comprehensive modifications to information technology. Intensive preparations are also being made for the use of biometric data in passports and identity documents.

Organizational chart



ChBK	Bundeskanzleramt	Federal Chancellery	http://www.bundeskanzler.de
AA	Auswärtiges Amt	Federal Foreign Office	http://www.auswaertiges-amt.de
BMF	Bundesministerium der Finanzen	Federal Ministry of Finance	http://www.bundesfinanzministerium.de
BMI	Bundesministerium des Innern	Federal Ministry of the Interior	http://www.bmi.bund.de
BMJ	Bundesministerium der Justiz	Federal Ministry of Justice	http://www.bmj.bund.de
BMWi	Bundesministerium für Wirtschaft und Technologie	Federal Ministry of Economics and Technology	http://www.bmwi.de
BAFin	Bundesanstalt für Finanzdienstleistungsaufsicht	Federal Financial Supervisory Authority	http://www.bafin.de
BAFl	Bundesamt für die Anerkennung ausländischer Flüchtlinge	Federal Agency for the Recognition of Foreign Refugees	http://www.bafl.de
BfV	Bundesamt für Verfassungsschutz	Federal Office for the Protection of the Constitution	http://www.verfassungsschutz.de
BGS	Bundesgrenzschutz	Federal Border Police	http://www.bundesgrenzschutz.de
BKA	Bundeskriminalamt	Federal Criminal Police Office	http://www.bka.de
BND	Bundesnachrichtendienst	Federal Intelligence Service	http://www.bundesnachrichtendienst.de
GBA	Generalbundesanwalt	Public Prosecutor General	http://www.generalbundesanwalt.de
ZKA	Zollkriminalamt	Central Office of the German Customs Investigation Service	http://www.zollkriminalamt.de

Organizational charts of the respective ministries and agencies are available at their respective websites. Not included in this chart is the administrative machinery of the Länder, which have responsibilities in such areas as police or taxation.

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